

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|---|---|------------------------------------|
| FREDERICK BANKS, |) | |
| |) | Civil Action No. 15-127 |
| Plaintiff, |) | |
| |) | Magistrate Judge Lisa Pupo Lenihan |
| v. |) | |
| |) | |
| UNITED STATES MARSHALS SERVICE; |) | |
| DIRECTOR, UNITED STATES MARSHAL; |) | |
| UNITED STATES OF AMERICA; DAVID |) | |
| HIGTON, U.S. ATTORNEY; CHIEF JUDGE |) | |
| JOY FLOWERS CONTI; JUDGE NORA BARRY |) | |
| FISCHER; ERIC HOLDER, ATTORNEY |) | |
| GENERAL; USA INSPECTOR GENERAL; |) | |
| KEN SALAZAR, U.S. DEPARTMENT OF THE |) | |
| INTERIOR; DIRECTOR/COMMISSIONER OF |) | |
| INDIAN AFFAIRS; BUREAU OF INDIAN |) | |
| AFFAIRS, UNITED STATES COURTHOUSE, |) | |
| 700 GRANT STREET, PITTSBURGH, PA 15219; |) | |
| |) | |
| ORLANDO HARPER, WARDEN, ALLEGHENY |) | |
| COUNTY JAIL; RICH FITZGERALD, COUNTY |) | |
| EXECUTIVE; COUNTY OF ALLEGHENY; |) | |
| CASE MANAGER SCHENK; UNIT MANAGER |) | |
| 40, CYNDY McSWIGGIN, SUPERVISOR; |) | |
| ALLEGHENY COUNTY JAIL, 950 SECOND |) | |
| AVENUE, PITTSBURGH, PA 15219, |) | |
| |) | |
| Defendants. |) | |

**UNITED STATES OF AMERICA’S MOTION
TO REQUIRE COMPLIANCE WITH 28 U.S.C. § 1915(g)**

1. The United States of America removed the action to this Court on January 30, 2015, pursuant to 28 U.S.C. §§ 1442 and 1446.
2. On or about November 17, 2014, plaintiff filed this civil rights complaint in the Allegheny County Court of Common Pleas at No. GD-14-021024, against numerous federal and state defendants. The federal defendants are the United States Marshals Service; Director, United States Marshal; United States of America; David Hickton, U.S. Attorney; Chief Judge

Joy Flowers Conti; Judge Nora Barry Fischer; Eric Holder, Attorney General; USA Inspector General; Ken Salazar, U.S. Department of the Interior; Director/Commissioner of Indian Affairs; and the Bureau of Indian Affairs.

3. In this action, plaintiff is seeking damages against defendants for allegedly confining him in the Allegheny County Jail beyond his release date and for conditions of his confinement.

4. Along with his civil action, plaintiff filed a Motion to Proceed *In Forma Pauperis*. See Exhibit B, attached to Docket No. 1.

5. As of October 29, 2014, just prior to commencing this action, plaintiff was released on bail (from the Allegheny County Jail) to the custody of the U.S. Probation Office, and ordered to report to the Renewal Center to commence service of his supervised release, in accordance with the terms and conditions of the Judgment issued by Judge Joy Flowers Conti in Criminal No. 04-176. See W.D. Pa. Crim. No. 03-245, Docket No. 672 (Order by Judge Nora Barry Fischer dated October 28, 2014); see also W.D. Pa. Crim. No. 04-176, Docket No. 715 (Judgment directing plaintiff to complete six months of supervised release at Renewal, Inc.).

6. Presently, plaintiff is under the custody of the U.S. Probation Office, serving his supervised release sentence at the Renewal Center. See W.D. Pa. Crim. No. 04-176, Docket No. 810 (Petition for Warrant or Summons for Offender Under Supervision filed January 30, 2015, indicating that the expiration of his supervised release sentence is currently April 28, 2015).

7. Accordingly, plaintiff is subject to the provisions of the Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 110 Stat. 1321 (1996), because he is a “prisoner” within the meaning of 28 U.S.C. § 1915(g). See *Banks v. United States*, No. 13-1615, 2013 WL 6230672, at *1 (W.D. Pa. Dec. 2, 2013) (“Contrary to his assertion, section 1915(g) specifically applies to

those “accused of” violating the terms and conditions of their probation or parole. *See* 28 U.S.C. § 1915(h). Therefore, Plaintiff’s objection is without merit.”); *Banks v. Balland, et al.*, No. 13-58, 2013 WL 786355, at *1 fn.2 (W.D. Pa. Jan. 18, 2013) (concluding that plaintiff Banks, a resident of Renewal, Inc., a halfway house, was a “prisoner” for PLRA purposes).

8. Plaintiff, a long-time frequent filer in this and other federal courts, has “three strikes” and is barred from bringing a civil action *in forma pauperis*. *See Banks*, 2013 WL 6230672, at *1, *3 (recognizing that Frederick Banks has three strikes); *Banks v. United States Probation Dep’t, et al.*, No. 13-1199, 2013 WL 5303953, at *2 fn. 1 (W.D. Pa. Sept. 19, 2013) (same); *Banks*, 2013 WL 786355, at *1 (same).

9. The three strikes rule, set forth in the PLRA, requires that leave to proceed *in forma pauperis* must be denied unless the prisoner is under imminent danger of serious physical injury. Specifically, 28 U.S.C. § 1915(g) states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

10. Inasmuch as plaintiff’s complaint relates to the date of his release from the Allegheny County Jail, and the conditions of his confinement there, he has alleged no facts that are sufficient to overcome section 1915(g)’s three strikes bar.

11. Accordingly, plaintiff is required to pay the \$400.00 filing fee before he can proceed with a civil action in this Court.¹ Otherwise, this action is subject to dismissal.

WHEREFORE, the United States of America respectfully requests that the Court issue an order requiring plaintiff to pay the filing fee of \$400.00.

A proposed order is attached.

Respectfully submitted,

DAVID J. HICKTON
United States Attorney

/s/ Jennifer R. Andrade
JENNIFER R. ANDRADE
Assistant U.S. Attorney
Western District of PA
U.S. Post Office and Courthouse
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7354

¹ The cost of filing a new civil case in federal court is \$400.00. This includes a \$50.00 administrative fee in addition to the \$350.00 filing fee. 28 U.S.C. § 1914.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within *Motion to Require Compliance with 28 U.S.C. § 1915(g)* was served by mail upon the following:

Frederick Banks
Plaintiff, *pro se*
DOC # 120759
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219

Frederick Banks
Plaintiff, *pro se*
P.O. Box 295
Pittsburgh, PA 15230²

Date: February 4, 2015

/s/ Jennifer R. Andrade
Jennifer R. Andrade
Assistant U.S. Attorney

² The address plaintiff provided in connection with his State Court filings conflicts with that which is currently of record in Criminal Action No. 04-176. As such, the address on the docket for Criminal Action No. 04-176 is included for purposes of service.